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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,613	04/03/2001	Sujit Sharan	303.930US4	3511

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EXAMINER

SARKAR, ASOK K

ART UNIT PAPER NUMBER

2891

DATE MAILED: 07/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/825,613

Applicant(s)

SHARAN ET AL.

Examiner

Asok K. Sarkar

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,29 and 67-71 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,29 and 67-71 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on February 2, 2006 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 – 4, 29, 67 and 71 are rejected under 35 U.S.C. 102(b) as being anticipated by Zhao, US 6,051,286.

Regarding claim 1, Zhao teaches a process of PECVD deposition comprising the steps of:

- providing an ion promoting atmosphere comprising at least a precursor as a reactant gas and a chemically inert reactive species promoter gas; and

- contacting a substrate with a plasma formed in the ion promoting atmosphere having a composition of approximately 50 to 90 % of a metal – containing gas in said ion promoting atmosphere at a pressure and temperature range sufficient for film deposition of said metal under the heading “Exemplary Process” described under columns 34 – 36.

Although, Zhao does not specifically mention a composition of approximately 50 to 90 % of a metal – containing gas in said ion promoting atmosphere the conditions used by Zhao are similar to that of the Applicant and the fact that the deposition rate can be as high as 400 Å/min signifies that the ion promoting atmosphere will inherently contain approximately 50 to 90 % of a metal – containing gas.

Regarding claim 2, Zhao teaches providing ion promoting atmosphere with argon in column 36, line 14.

Regarding claim 3, Zhao teaches temperature range of 100 – 500 °C in column 35, line 30.

Regarding claim 4, Zhao teaches pressure range of 1mTorr – 10 Torr in column 35, line 17.

Regarding claims 29 and 67, Zhao teaches all limitations of this claim as was described earlier in rejecting claim 1.

Regarding claim 71, Zhao teaches a PECVD process wherein the precursor comprises a metal chloride precursor (column 35, line 3), reactant selected as hydrogen (column 36, line 21) and reaction promoter gas argon in column 36, line 14 and under the heading “Exemplary Process” described under columns 34 – 36.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 68 – 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zhao, US 6,051,286.

Regarding these claims, Zhao teaches the precursor has a first flow rate, the

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Reactant has a second flow rate, and the reaction promoter has a third flow rate of about 100 – 10,000 sccm and controlling the various flow rates and ratios in column 36, lines 1 – 50, but fails to teach the reaction promoter flow rate being between 10 – 100% of the second flow rate and the first flow rate being 10 sccm and the second flow rate being 10,000 sccm.

However, it would have been obvious to one with ordinary skill in the art at the time of the invention to judiciously adjust and control these parameters during the deposition of titanium by the PECVD process through routine experimentation and optimization to achieve optimum benefits in terms of film deposition rate and thickness uniformity(see MPEP 2144.05) and it would not yield any unexpected results.

Note that the specification contains no disclosure of either the critical nature of the claimed processes or any unexpected results arising therefrom. Where patentability is said to be based upon particular chosen methods or upon another variable recited in a claim, the Applicant must show that the chosen methods or variables are critical (*Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936 (Fed. Cir., 1990)). See also *In re Aller, Lacey and Hall* (10 USPQ 233 – 237). “It is not inventive to discover optimum or workable ranges by routine experimentation”.

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140

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F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 67 – 71 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 3 and 15 of U.S. Patent No.

6,291,341. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations of claims 67 and 71 are cited by claim 15 US 6,291,341 since it teaches precursor as TiCl_4 , reactant as being hydrogen and the inert reaction promoter as argon. Similarly, limitations of claims 68, 69 and 70 are taught by claims 3 and 15 since these claims teach the flow rates of individual gases supplied into the plasma chamber.

10. Claims 1 – 4 and 29 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 11 and 15, of U.S. Patent No. 6,291,341 in view of Zhao, US 6,051,286.

Claims 1, 11 and 15, of U.S. Patent No. 6,291,341 teach the limitations of claims 1 – 4 and 29 except that a composition of approximately 50 to 90 % of a metal – containing gas in said ion promoting atmosphere.

Zhao teaches the limitations of the above claims and other conditions of the

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PECVD deposition process, which supports a composition of approximately 50 to 90 % of a metal – containing gas in said ion promoting atmosphere during the deposition process as was explained earlier in rejecting claims 1 and 29.

Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to modify claims 1, 11 and 15, of U.S. Patent No. 6,291,341 so that a composition of approximately 50 to 90 % of a metal – containing gas in said ion promoting atmosphere during the deposition process as taught by Zhao as was described earlier in rejecting claims 1 and 29.


Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Asok K. Sarkar whose telephone number is 571 272 1970. The examiner can normally be reached on Monday - Friday (8 AM- 5 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William B. Baumeister can be reached on 571 272 1722. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Asok K. Sarkar
June 27, 2006

Primary Examiner